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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,212	08/16/2001	Ryuji Hotta	212905US3	9211
22850	7590	02/05/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			A, PHI DIEU TRAN	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

# Office Action Summary

Application No.

09/930,212

Applicant(s)

HOTTA, RYUJI

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-8,11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8,11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/29/03 has been entered.

1. PRODUCT BY PROCESS CLAIM:

“ The subject matter present is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

***The limitations “wherein the fastening member is enabled to be fixed ...by a nail or a screw....with the nail” in claims 1, 7, 8, 14 are treated according to the above office policy with regard to product by process limitations.***

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 7, 8, 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (6315489) in view of Japan (293890), and Helfrecht (DE 3304806).

Watanabe (figures 7-8) shows a fastening member being disposed over an upper rabbeted horizontal edge of a lower siding board (40B) and a lower rabbeted horizontal edge of an upper

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siding board (40A), the fastening member is enabled to fixed to the framework by a nail or screw (through the holes at 34 and the ones on the incline), the fastening member being of a shape that is elongated in lateral directions such that a plurality of studs of the framework that are disposed in a laterally aligned manner may be connected and fixed, the fastening member having a base plate portion(30) abutting against rear side surfaces of siding boards (40A, 40B) that are vertically disposed, a support portion (32) that is provided to erect frontward from the base plate portion, an upper board engaging portion (33A) that is bent in an oblique upward direction from the support portion an upper board engaging portion (33A), a lower board engaging portion (33B) that is bent in an oblique downward direction from the support portion, an upper abutting portion (the part that contains holes 34) at its upper portion, an upper rising portion formed in a frontward rising manner from the upper abutting portion, a central plate portion (the part of 30 and 32), the support portion (32) is formed to be erected from the central plate portion, the upper rising portion comprising a sloped portion (figure 7, the part on top and adjacent to the part 31) wherein a nail hole is formed on the sloped portion, the upper abutting portion abut an underlayment at its upper portion (the outer most layer of part 61).

Watanabe does not show the base plate portion having a lower abutting portion at its lower portion , a lower rising portion that is respectively formed in a frontward rising manner from the lower abutting portion, the lower rising portion comprising a horizontal plane portion that is arranged to form a **substantially** right angle with respect to the central plate portion, lower abutting portion that abut the underlayment at its lower portion, the upper rising portion comprising a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate portion, the lower abutting portion comprising a screw hole, the screw

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hole is formed on one side of the support portion and the nail hole is formed on the opposite side of the support portion from the screw hole, the screw and nail holes being at substantially equal distance from the support portion.

Japan (figure 1) shows a lower abutting portion (6) having a screw hole(11) being at substantially equal distance from the center of the sloped portion of the upper portion, the lower abutting portion (figure 5) having a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate portion, lower abutting portion that abut a supporting structure at its lower portion.

Helfrecht shows upper and lower rising portion comprising a horizontal plane portion (32) that is arranged to form a substantially right angle with respect to the central plate portion (34), a sloping portion (33) connecting to the horizontal plane portion.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-21 to show the base plate portion having a lower abutting portion at its lower portion, a lower rising portion that is respectively formed in a frontward rising manner from the lower abutting portion, the lower rising portion comprising a horizontal plane portion that is arranged to form a **substantially** right angle with respect to the central plate portion as taught by Japan (.890), lower abutting portion that abut the underlayment at its lower portion, the upper rising portion comprising a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate portion as taught by Helfrecht, the lower abutting portion comprising a screw hole, the screw hole is formed on one side of the support portion and the nail hole is formed on the opposite side of the support portion from the screw hole, the screw and nail holes being at substantially equal distance from the

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support portion because the base plate portion having a lower abutting portion at its lower portion, a lower rising portion that is respectively formed in a frontward rising manner from the lower abutting portion, the lower rising portion comprising a horizontal plane portion that is arranged to form a **substantially** right angle with respect to the central plate portion would provide strong support for the fastener against forces acting inwardly toward the wall as taught by Japan (...890), having the lower abutting portion abuts the underlayment at its lower portion would provide good insulation to the frame structure, having the upper rising portion comprising a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate portion would provide strong structural support for the fastener as taught by Helfrecht, having the lower abutting portion comprising a screw hole, the screw hole is formed on one side of the support portion and the nail hole is formed on the opposite side of the support portion from the screw hole, the screw and nail holes being at substantially equal distance from the support portion would enable the secure fastening of the bracket to the wall structure as taught by Japan (...890).

With respect to screws and nail holes, the holes are indifferent as there is no claimed structural specifics of the holes that distinguishes them apart, and the nails/screws are not claimed structures either. This interpretation applies to the limitations set forth above.

Per claims 4, 11, Watanabe as modified shows all the claimed limitations except for protruding portions projecting frontward from an upper end of the abutting portion and from a lower end of the lower abutting portion.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Watanabe's modified structure to show protruding portions projecting

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frontward from an upper end of the abutting portion and from a lower end of the lower abutting portion because it would strengthen the upper and lower abutting portion against bending moments and stress.

3. Claims 6, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe(6315489) in view of Japan (293890) and Helfrecht (DE 3304806).

Watanabe as modified shows all the claimed limitations except for the lower abutting portion having an abutting surface that is substantially parallel to the central plate portion.

Japan further shows the lower abutting portion having an abutting surface that is substantially parallel to the central plate portion.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Watanabe's modified structure to show the lower abutting portion having an abutting surface that is substantially parallel to the central plate portion because it would allow for extra attachment area for attaching the fastener to the frame structure as taught by Japan (figure 4).

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 4, 6-8,11,13-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

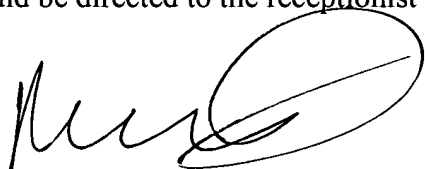
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different fastening structures.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Phi Dieu Tran A  
January 30, 2004